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**Univar**  
CORPORATION

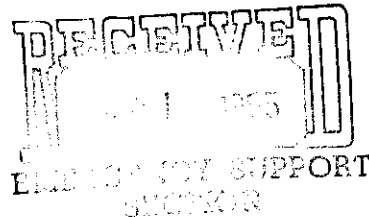
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March 9, 1995

Ms. Linda Beasley  
Enforcement Specialist  
U.S. EPA -- Region V  
Emergency Support Section HSE-5J  
77 West Jackson Blvd.  
Chicago, IL 60604



**Re: Conservation Chemical Company of Illinois, Inc. Site, Gary, IN**  
**Your Reference: HSE-5J/EERB**

Dear Ms. Beasley:

I am responding to your letter dated February 27, 1995, directed to "Univar Van Waters & Rogers Corporation (for Pacific Resins & Chemicals)."

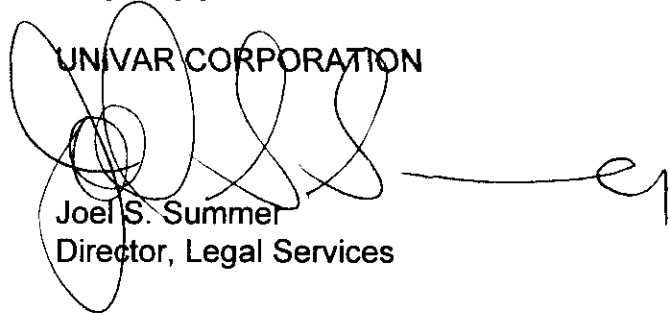
Pacific Resins & Chemicals was administratively dissolved as a corporation by the State of Washington on December 31, 1981. It is our position that PR&C has no capacity to be sued pursuant to the Revised Code of Washington (RCW) 23A.28.250, the general rule in our state protecting shareholders from corporate liability of a dissolved corporation more than two years after dissolution. It is also our position that neither Univar Corporation nor Van Waters & Rogers Inc. (which are two separate corporations) have any successor liability for the acts of PR&C.

I enclose a copy of an Order issued by Judge Carolyn Dimmick in the Western Processing Superfund case that supports our position.

Ms. Linda Beasley  
March 9, 1995  
Page 2

I would appreciate it if you would make the necessary corrections to your facility database concerning Univar with respect to USEPA's efforts to identify and notify potentially responsible parties for the cleanup of the Conservation Chemical Company of Illinois Superfund Site in Gary, IN.

Very truly yours,

UNIVAR CORPORATION  
  
Joel S. Summer  
Director, Legal Services

Enclosure

FOR YOUR INFORMATION  
SIDLER ABBOTT GATES & LUCAS  
10 - 1st INTERSTATE CENTER  
SEATTLE, WA 98104  
INITIALS \_\_\_\_\_ DATE \_\_\_\_\_  
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SEP 10 1985

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY \_\_\_\_\_ DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STANDARD EQUIPMENT, INC., )  
a Washington corporation, )  
Plaintiff, ) No. C84-1129D  
v. )  
THE BOEING COMPANY, et al., ) ORDER  
Defendants. )

This matter is before the Court on motion of Pacific Resins and Chemicals, Inc. (PRC) to dismiss. Having heard oral argument of the parties, and having considered the memoranda, affidavits and supplemental authority submitted by counsel, the Court finds and rules as follows:

The Secretary of the State of Washington dissolved PRC as a corporation December 31, 1981, upon written consent of its shareholders. PRC is one of 32 named defendants in the above cause of action seeking damages for the alleged deposit of hazardous wastes. The action was filed August 23, 1984.

Under RCW 23A.28.250, the general rule protecting shareholders from corporate liability is modified to the

1 extent of permitting claims against shareholders for the  
2 distribution of proceeds for two years following dissolution.

3 The dissolution of a corporation . . . shall not  
4 take away or impair any remedy available to or  
5 against such corporation, . . . for any right or  
6 claim existing, or any liability incurred, prior  
to such dissolution if action or other proceeding  
thereon is commenced within two years after the  
date of dissolution.

7 RCW 23A.28.250. See also Lonsdale v. Chesterfield, 99 Wn.2d  
8 353, 360 (1983).

9 Because plaintiff's action was brought more than two  
10 years after PRC's dissolution, the Court is required to  
11 determine whether RCW 23A.28.250 is an absolute bar to  
12 actions, or whether it is subject to the discovery rule,  
13 tolling the statute of limitation until the injured party  
14 could reasonably have discovered the injury. See, e.g.,  
15 Peters v. Simmons, 87 Wn.2d 400, 404 (1976); U.S. Oil Refining  
16 Co. v. Department of Ecology, 96 Wn.2d 85 (1981).

17 No reported Washington case has determined this issue.  
18 Cases from other jurisdictions, however, have held similar  
19 statutes to be an absolute time bar as to shareholder  
20 liability for assets distributed upon corporate dissolution.  
21 See, e.g., Canadian Ace Brewing Co. v. Joseph Schultz Brewing  
22 Co., 629 F.2d 1183 (7th Cir. 1980); Johnson v. RAC Corp., 491  
23 F.2d 510 (4th Cir. 1974); Scheild v. Bantam Co., 293 F. Supp.  
24 94, 96 (D.C. Iowa 1968). In describing an earlier case, the  
25 Canadian Ace court distinguished between a survival statute  
26 and a statute of limitation, noting that the corporate

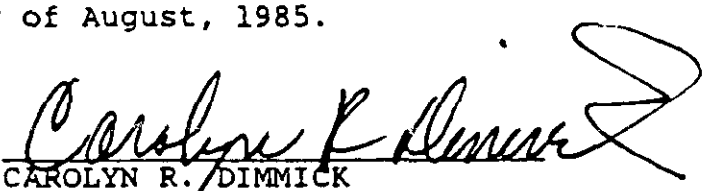
1 survival statute was absolute in nature. In interpreting the  
2 applicable Illinois law, the court described its purpose to  
3 "aid in the winding up process of a corporation following  
4 the dissolution and also to prevent the abuse whereby a  
5 corporation would dissolve in order to escape creditors." 629  
6 F.2d at 1184. See also Litts v. Refrigerated Transport Co.,  
7 Inc., 375 F. Supp. 675, 678 (M.D. Penn. 1973) (interpreting  
8 Georgia statutory purpose for "winding up" business  
9 activities).

10 The parties were unable to agree on a question for  
11 certification to the Washington Supreme Court. Further, the  
12 parties would be prejudiced in complex ongoing litigation were  
13 the Court to certify the question on its own motion.

14 Therefore, the motion to dismiss defendant Pacific  
15 Resins and Chemicals, Inc. is GRANTED.

16 The Clerk of the Court is instructed to send copies of  
17 this Order to all counsel of record.

18 DATED this 10<sup>th</sup> day of August, 1985.

19  
20   
21 CAROLYN R. DIMMICK  
22 United States District Judge  
23  
24  
25  
26

**Univar**  
CORPORATION

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